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FILED

OCT 31 2008

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

4 In re:) Case No. 08-32768-D-13L
5 KATHLEEN B. FIELD,)
6)
7 Debtor.)
8 KATHLEEN B. FIELD,) Adv. Pro. No. 08-2593-D
9 Plaintiff,) Docket Control No. KBF-1
10 v.)
11 USDA RURAL DEVELOPMENT,)
12 Defendant.)
13

MEMORANDUM DECISION

15 The court having considered the application of the debtor
16 and plaintiff herein, Kathleen B. Field ("the debtor"), for a
17 temporary restraining order and for a hearing on a motion for a
18 preliminary injunction, the court makes the following findings of
19 fact and conclusions of law.

20 On September 9, 2008, the debtor filed a voluntary petition
21 under chapter 13 of the U.S. Bankruptcy Code, thereby commencing
22 the bankruptcy case in which this adversary proceeding is
23 pending. On October 9, 2008, having considered the debtor's
24 written opposition and oral arguments made at a hearing held
25 October 7, 2008, the court granted the motion of the United
26 States of America, Department of Agriculture, Rural Development
27 Agency ("Rural Housing") for relief from the automatic stay of 11
28 U.S.C. § 362(a).

1 Today, October 31, 2008, at 10:17 a.m., the debtor filed the
2 complaint which initiated this adversary proceeding. At the same
3 time, she filed an application for a temporary restraining order
4 and order to show cause re preliminary injunction, in which she
5 seeks an order from this court to prevent Rural Housing from
6 selling her home at a foreclosure sale set for today, at 1:30
7 p.m. The debtor filed a proof of service evidencing service of
8 the application, notice of motion, and declaration of the debtor
9 on the office of the United States Attorney for this district by
10 hand-delivery today.

11 This is the third case filed by the debtor and/or her
12 husband, Richard L. Field, in an attempt to defer or prevent
13 Rural Housing's foreclosure sale. The first case, Case No. 05-
14 40750-D-13L, was commenced by the debtor and Mr. Field jointly on
15 November 2, 2005, five days before the then-scheduled foreclosure
16 sale date, and was dismissed by this court on January 30, 2008,
17 for failure to make plan payments, after the court had granted
18 two motions by the Fields to modify their confirmed plan. The
19 second case, Case No. 08-25433-D-13L, was filed by Mr. Field
20 alone on April 28, 2008, two days before the then-scheduled
21 foreclosure sale date, and was dismissed on July 25, 2008, for
22 failure to make payments under his proposed chapter 13 plan.¹
23 The third case, the present one, was commenced by the debtor
24 alone on September 9, 2008, one day before the then-scheduled
25 foreclosure sale date.

26 _____
27 1. The court had granted relief from stay in favor of Rural
28 Housing at a hearing held July 22, 2008, two days prior to the date
of the hearing on the chapter 13 trustee's motion to dismiss the
case.

1 As previously indicated, the court granted relief from stay
2 in this case in favor of Rural Housing on October 9, 2008. The
3 debtor delayed until this morning, less than three and one-half
4 hours before the time of the scheduled foreclosure sale, before
5 seeking an order restraining the sale, and before notifying Rural
6 Housing that she would be seeking such an order. The debtor has
7 offered no explanation for this delay. The debtor has not shown
8 that there has been any change in her circumstances since relief
9 from stay was granted on October 9, 2008. The debtor makes no
10 allegation in the application for a temporary restraining order
11 that was not offered previously in her opposition to the motion
12 for relief from stay.

13 Under these circumstances, the court finds that the debtor
14 has failed to shows facts that would warrant the issuance of a
15 temporary restraining order. In addition, the court finds that
16 the debtor failed to make reasonable and timely efforts to
17 contact the court to arrange for a hearing, or to contact Rural
18 Housing's counsel to advise him or her of the time and place
19 where the debtor would request relief from the court. The court
20 is not satisfied that service of the application, notice of
21 motion, and declaration on Rural Housing less than three and one-
22 half hours prior to the time of the scheduled sale satisfies the
23 notice requirements of Federal Rule of Civil Procedure
24 65(b)(1)(B), incorporated in this proceeding by Federal Rule of
25 Bankruptcy Procedure 7065, or the notice requirements of Local
26 Bankruptcy Rule 7065-1(a) and (b)(5).

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28 / / /

1 For these reasons, the court will deny the debtor's
2 application for a temporary restraining order and will deny the
3 debtor's motion for a preliminary injunction as moot. The court
4 will issue an appropriate order.

5 Dated: October 31, 2008

Robert Bardwil

6 ROBERT S. BARDWIL
United States Bankruptcy Judge

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CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

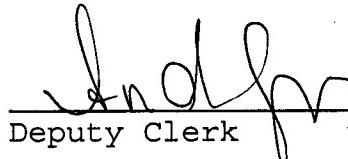
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DATE: 10/31/08



Deputy Clerk